



Civil Resolution Tribunal

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Type: Strata

Civil Resolution Tribunal

Indexed as: *Xue v. The Owners, Strata Plan LMS4467*, 2021 BCCRT 1026

B E T W E E N :

KANG XUE

APPLICANT

A N D :

**The Owners, Strata Plan LMS4467 and
ORCA WEST DEVELOPMENTS LTD.**

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This dispute is about a storage locker. The applicant, Kang Xue, owns a strata lot in the respondent strata corporation, The Owners, Strata Plan LMS4467 (strata). Mr. Xue says that, when he purchased his strata lot, he was told that he had the exclusive use of storage locker 39. However, the respondent strata lot owner, Orca West

Developments Ltd. (Orca West), later informed Mr. Xue that locker 39 is limited common property (LCP) for its own strata lot. Section 1 of the *Strata Property Act* (SPA) defines LCP as common property designated for the exclusive use of the owners of one or more strata lots.

2. Mr. Xue says that locker 29 that is reportedly designated as LCP for his strata lot does not exist, there is an error on the strata plan, and that he is entitled to locker 39. He asks for an order that the respondents “assign and register” locker 39 as LCP for his strata lot or, in the alternative, that locker 29 be constructed for his use.
3. The strata did not offer an opinion on Mr. Xue’s requested remedies, other than to say that it is not involved in the situation. Orca West says that Mr. Xue has no “legal right or interest” in locker 39.
4. In his Dispute Notice, Mr. Xue named Section 2 of The Owners, Strata Plan LMS4467 as a party. Although the strata was sectioned initially, at its November 4, 2015 annual general meeting, the owners voted to repeal all bylaws related to sections and replace them with bylaws that created residential and commercial types of strata lots. This amendment was filed at the Land Title Office on November 10, 2015. As the named section no longer exists as a separate legal entity, I find that the appropriate party is the strata. I have exercised my discretion under section 61 of the *Civil Resolution Tribunal Act* (CRTA) and amended the style of cause to reflect only the strata and Orca West as respondents.
5. Mr. Xue is self-represented. The strata is represented by a member of the strata council, and Orca West is represented by an employee.

JURISDICTION AND PROCEDURE

6. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over strata property claims under section 121 of CRTA. CRTA section 2 says the CRT’s mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must

apply principles of law and fairness, and recognize any relationships between the dispute's parties that will likely continue after the CRT process has ended.

7. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice and fairness.
8. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, even where the information would not be admissible in court. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
9. Under CRTA section 123, in resolving this dispute the CRT may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.
10. Mr. Xue has commenced a separate dispute (ST-2021-001651) against the strata about procedural matters related to a special general meeting. I have issued a separate decision for that linked dispute.

ISSUES

11. The issues in this dispute are:
 - a. Whether Mr. Xue has an entitlement to locker 39 due to past use or his purchase transaction,
 - b. Whether there is an error on the strata plan and, if so, what is the appropriate remedy, and
 - c. Whether the respondents must construct a storage locker for Mr. Xue.

EVIDENCE AND ANALYSIS

12. The strata is comprised of residential (strata lots 10 through 47) and commercial (strata lots 1 to 9) types of strata lots.
13. The strata has a storage area located on parking level 2. The development project's disclosure statement stated that "it is intended that the strata corporation will, by Special Resolution, designate one or more storage lockers as [LCP] for the exclusive use of the owner of each residential strata lot within the development".
14. According to the strata plan, each storage area is designated as LCP for an identified strata lot. The strata plan shows that there are 3 storage areas designated as LCP for strata lot 7 and 1 area designated as LCP for strata lot 19. The strata plan does not specify that this storage would take the form of a locker. Some lockers were constructed, but it is not clear when or by whom. It does not appear that strata lots 1 through 6, 8, or 9 have storage areas assigned to them.
15. Mr. Xue and another person purchased strata lot 19 from its previous owners in 2013. The real estate listing advertised the strata lot as having a locker and the purchase and sale documents identify locker number 39 as being assigned to strata lot 19. However, the October 11, 2013 Form B Information Certificate the strata's property manager issued listed "Locker No. 29" as being associated with strata lot 19. It appears that Mr. Xue did not notice this discrepancy.
16. The tenant of strata lot 19 had been storing items in locker number 39 during the years when strata lot 19 was owned by the previous owners, and this continued after Mr. Xue purchased strata lot 19.
17. Orca West owns strata lot 7 and, based on the designation in the strata plan, has the exclusive use of locker 39. Although it is not clear when Orca West became aware that the tenant was storing items in locker 39, there is no indication that there was any form of agreement to allow this. At some point in 2019, Orca West asked Mr. Xue and his tenant to stop storing items in locker 39.

18. Mr. Xue sought assistance from the strata council to resolve the issue with the locker. Although it is not clear from the evidence what exactly transpired, in a January 5, 2021 email, the strata's property manager advised Mr. Xue that the strata council had decided not to hold a hearing about the locker issue. The strata council later changed this decision and held a hearing on March 2, 2021. Mr. Xue did not attend the hearing, but says that the strata council advised him that it did not intend to take any action on the locker dispute.
19. Mr. Xue submits that he is entitled to a locker and the respondents are obliged to provide him with one. He says that the strata's owner developer (a corporate entity he says is associated with Orca West) never constructed locker 29. According to Mr. Xue, the space where locker 29 is shown on the strata plan does not contain a locker but rather sump pump controls in an otherwise empty space. Mr. Xue says that blueprints show that this equipment was supposed to be installed elsewhere.
20. Mr. Xue points out that his purchase contract with the previous owners states that locker 39 is assigned to strata lot 19, and states that locker 39 is "the only locker we have". He submits that he is entitled to a locker and the respondents are obliged to provide him with one. Mr. Xue says that there is "obviously an error in the Strata Plan and related record" that needs to be corrected. As noted, he asks for orders that locker 39 be designated as LCP for his strata lot or that the machinery be removed and locker 29 constructed at no cost to him.
21. The strata submits that it is up to a potential owner to review the documentation to ensure that it is correct before buying a strata lot. The strata says that it has "no obligation" as the situation does not involve it. The strata did not address Mr. Xue's submission that locker 29 does not exist.
22. Orca West submits that it is the "rightful owner" of locker 39 as it is designated as LCP for strata lot 7 in the strata plan. It says that, if the purchase documents for strata lot 19 indicated otherwise, this is something that Mr. Xue should have noticed and dealt with before completing the sale. Orca West's position is that Mr. Xue has no legal basis for his claim for the use of locker 39. Although Orca West stated in its

Dispute Response that it intended to counterclaim to have Mr. Xue vacate locker 39, it did not file a counterclaim. It is not clear whether Mr. Xue's tenant continues to occupy locker 39.

23. Further, Orca West says that, as it is a separate entity, it is not liable for any errors made by the owner developer, Orca West Developments (Kerrisdale) Ltd. Based on my decision below, I have not found it necessary to consider the precise nature of the relationship between Orca West and the owner developer.

Does Mr. Xue have an entitlement to locker 39?

24. I accept that locker 39 is 1 of the 3 storage lockers designated as LCP for Orca West's strata lot 7 on the strata plan. I disagree with Mr. Xue's suggestion that he is entitled to locker 39 based on past use and the documentation involved in his purchase of the strata lot. The fact that the previous owner and tenant had been using locker 39 for years (with or without Orca West's knowledge) does not alter its designation as LCP for strata lot 7.
25. Similarly, the notation on the purchase and sale agreement between Mr. Xue and the strata lot's previous owners about locker entitlement does not alter the LCP designation or create any form of entitlement to the locker. Neither respondent was a party to that transaction, and they cannot be held responsible for any representations the previous owners may have made to Mr. Xue.
26. In order for Mr. Xue to have an entitlement to locker 39, the designation of LCP to strata lot 7 would need to be removed and then the locker re-designated to strata lot 19. A designation of LCP made by the owner developer on a strata plan may be altered only as set out in the SPA. According to section 75 of the SPA, this would require that the strata plan be amended under section 257, which requires that a resolution approving the amendment be passed by a unanimous vote at an annual or special general meeting. There is no indication that this has occurred.
27. In the circumstances, I find that the LCP designation of locker 39 to strata lot 7 remains in place and in force. The owner of strata lot 7 has the exclusive use of locker

39 and 2 other storage lockers as set out on the strata plan. Mr. Xue does not have an entitlement to locker 39 through past use or his dealings with the previous owner.

Is there an error in strata plan?

28. Mr. Xue's position is that there is an obvious error in the strata plan. Mr. Xue asks for an order that the strata and Orca West "assign and register" the locker to him by submitting a request to the Land Title Office to correct the error by designating locker 39 as LCP for strata lot 19. Neither respondent made specific submissions about whether the strata plan contains an error.
29. Mr. Xue provided a photo of what he says is the relevant area. The photo shows a locker numbered 28, then a space with no door that contains some mechanical equipment and a shovel, and then locker numbered 30. Mr. Xue says the space between lockers 28 and 30 is where locker 29 was supposed to be constructed. He provided a small extract from a blueprint or design drawing that he says proves that the equipment should have been installed in a different location.
30. The strata plan shows a room with 41 storage areas but it does not specify that the storage areas are lockers or contain the numbers assigned to the individual lockers or areas. Based on the evidence before me, I cannot determine whether the finished lockers have the same configuration as the storage areas shown on the strata plan or whether there is a locker for each storage area. I also cannot determine whether the equipment shown installed in the empty space between lockers 28 and 30 was intended to be installed elsewhere. However, as I will discuss below, I find that the evidence about locker 29 is not determinative of this issue.
31. Mr. Xue submits that what he calls an error in the strata plan should be corrected using section 14.12 of the *Strata Property Regulation* (Regulation). This section says that, if there is an error in any registered strata plan (which is defined as "any erroneous measurement or error, defect or omission in a registered strata plan"), the registrar of titles as defined in the *Land Title Act* may consider submissions on the matter and, after examining the evidence, may correct the error.

32. Mr. Xue says that a decision from the British Columbia Court of Appeal supports his claim. In *Chow v. The Owners, Strata Plan NW 3243*, 2017 BCCA 28 at paragraph 24, the court considered the jurisdiction of the registrar, and stated that “a court has the jurisdiction to deal with the issue posed by s. 14.12 and make a declaration determining rights under the section and, if the court determines that there was such an error that should be rectified, pronounce an order directing the registrar to correct the record”.
33. I note that *Chow* has been interpreted as standing for the proposition that the court and the registrar of land titles have concurrent jurisdiction to consider whether there is an error in a registered strata plan and, if so, to rectify that error (see *Entwistle v. The Owners, Strata Plan EPS 3242*, 2019 BCSC 1311 at paragraph 51). The courts in *Chow* and *Entwistle* did not comment on the CRT’s ability to consider this issue but, as noted above, that is not the specific remedy Mr. Xue is requesting.
34. While *Chow* addresses the available procedures for correcting errors in strata plans, it does not alter the requirement for evidence to establish the presence of an error. As the applicant, Mr. Xue bears the burden of proving his claims. I find that this includes the need to prove the presence of the errors in the strata plan he says the registrar should consider correcting under section 14.12 of the Regulation.
35. While it may be true that there is no locker 29, I find that the strata plan addresses only storage areas, not storage lockers. There is no indication on the strata plan that each storage area required the construction of a locker such that the lack of a locker 29 would constitute an error.
36. In addition, Mr. Xue’s requested order would affect locker 39 as LCP for strata lot 7. Even if there was some sort of error with respect to storage area 29, I find that there is no evidence to support the conclusion that there was any error in designating 3 storage areas, including locker 39, as LCP for strata lot 7. In particular, the evidence does not show that locker 39 was intended to be designated as LCP for strata lot 19 rather than strata lot 7. There is no statement from the strata plan’s author about errors in LCP designations, and nothing other than Mr. Xue’s own assertion to

suggest that locker 39 was intended to be LCP for his own strata lot. I find that Mr. Xue's submission regarding his entitlement to locker 39 is speculative and not supported by the evidence.

37. I find that Mr. Xue has not met his burden of establishing an entitlement to locker 39 based on a possible error in the strata plan. This is so no matter what the relationship is between Orca West and the owner developer. Therefore, I find that he is not entitled to an order that the respondents submit the matter to the registrar for correction of the strata plan under section 14.12 of the Regulation.

Construction of a locker

38. Mr. Xue submits that he is entitled to a locker based on the owner developer's disclosure statement. He says that both respondents are responsible to provide him with a locker, and asks for an order that they move the sump pump machinery and construct a locker for him.

39. As noted above, the owner developer's disclosure statement contemplated the designation of 1 or more storage lockers as LCP for each residential strata lot. A disclosure statement describes the intentions of the owner developer, but does not provide guarantees (see, for example, *Berman v. The Owners, Strata Plan EPS2470*, 2019 BCCRT 179). A disclosure statement is not binding on a strata corporation. Further, a strata corporation is not responsible for an owner developer's failure to meet the intentions set out in a disclosure statement (see *Sabell v. The Owners, Strata Plan KAS 3635*, 2021 BCCRT 620 at paragraph 40).

40. The above decisions are not binding upon me, but I agree with the reasoning. Although the disclosure statement discussed the provision of storage lockers, I find that it did not amount to a guarantee that each residential strata lot would have a locker designated to it as LCP. The disclosure statement did not create an obligation to provide Mr. Xue with a storage locker.

41. Based on the evidence before me, it is not clear whether the owner developer constructed lockers for each storage area shown on the strata plan or whether the

strata (or individual owners) completed this work at a later date. There is no indication that there was a separate agreement between the owner developer and the strata about storage lockers. I also find that there was no agreement between Mr. Xue and the owner developer or the respondents about the construction of a locker. Despite what Mr. Xue's purchase documentation may say, I find that it does not create an entitlement that would require either respondent to build him a locker.

42. In summary, I find that Mr. Xue has not shown that he is entitled to the exclusive use of locker 39 due to past use or an error in the strata plan. I also find that Mr. Xue has not established that the respondents must build him a locker. So, I dismiss Mr. Xue's claims.

CRT FEES AND EXPENSES

43. Under section 49 of the CRTA, and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. As Mr. Xue was not successful, I dismiss his claim for reimbursement of CRT fees and for reimbursement of dispute-related expenses.
44. The strata must comply with section 189.4 of the SPA, which includes not charging dispute-related expenses against Mr. Xue.

ORDER

45. I dismiss Mr. Xue's claims and this dispute.

Lynn Scrivener, Tribunal Member